REMARKS

In response to the action of April 27, 2009, Applicant asks that all claims be allowed in view of the following remarks. Claims 12-39, 43-48, and 50-54 are pending in this application, with claims 12, 27, 43, and 50 being independent. Claims 42 and 49 have been cancelled without prejudice or disclaimer of subject matter, and claims 43 and 50 have been rewritten in independent form. No new issues have been raised by this amendment.

Interview Summary

Applicants' undersigned representative thanks Examiner Duffy for the courtesies extended during the interview conducted on July 15, 2009. During the interview, Examiner Duffy and Applicants' representative discussed the rejections of claims 12, 27, 43, and 50. This reply reflects the substance of the interview.

§ 103 Rejections

Independent claims 12 and 27, along with their dependent claims 15-18, 20, 21, 24-26, 29-32, 34, 35, 38, and 39, were rejected as being unpatentable over Bowen ("How to get the most out of COMPUSERVE, 4th edition, 1989"). Applicant respectfully requests reconsideration and withdrawal of these rejections because Bowen fails to describe or suggest all of the features of independent claims 12 and 27, as discussed more fully below.

For example, independent claim 12 recites enabling a first user to identify profile information with respect to a plurality of video games, the profile information including data that enables user determination of the skill of the first user for a first identified video game relative to a second identified video game. Bowen fails to describe or suggest at least these features.

Specifically, the Office Action acknowledges that "Bowen does not explicitly disclose that the interface enables user determination of the skill of a first user for a first identified video game relative to a second video game or players identifying skill and interest levels in said games." Office Action of April 27, 2009 at pages 2-3.

In *KSR Int'l v. Teleflex Inc.*, the Supreme Court warned that "a factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of argument reliant upon ex post reasoning." *KSR Int'l v. Teleflex Inc.*, 82 USPQ 2d 1385 at 1397 (2007). In

addition, the M.P.E.P. acknowledges that the "tendency to resort to 'hindsight' based upon Applicant's disclosure is often difficult to avoid due to the very nature of the examination process," but instructs that "impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art." M.P.E.P. § 2142 (emphasis added). In the present instance, Applicant submits that the statements presented in the Office Action to support the rejection over Bowen are not based on facts gleaned from the prior art, but, instead, based on hindsight gleaned from Applicant's disclosure.

Specifically, Bowen describes providing an online profile with a general list of interests (e.g., "Flying, fishing, jazz, painting"). Bowen at pages 94-95. Independent claim 12, however, recites enabling a first user to identify profile information with respect to a plurality of video games, the profile information including data that enables user determination of the skill of the first user for a first identified video game relative to a second identified video game. The Office Action contends that:

> as players engaging in competition with each other it is reasonable to assume that the player would want to find an opponent that would be entertaining to play against. As player skill would be the main variable in the enjoyment of a game, players would be motivated to include an indication of their skill at a game so that they may find players of a desired skill level with which to compete. Rating of players was widely know[n] at the time of invention in many gaming circles such as chess and sports games (i.e. baseball player cards with skill indication based on stats) and it therefore would have been obvious to provide an indication of player skill to facilitate matchmaking and enjoyable competition. Office Action of April 27, 2009 at pages 10-11.

Applicant disagrees and submits that this expansion of the Bowen reference is not permissible under *KSR Int'l v. Teleflex Inc.* and law of obviousness. The above-quoted argument is premised on assumptions and facts that the Office Action has not made of record. Although the Office Action asserts that "player skill would be the main variable in the enjoyment of a game" and that "[r]ating of players was widely know[n] at the time of invention," the Office Action has not provided any documentary evidence to support these assertions. Accordingly, the Bowen rejection is not based on facts gleaned from the prior art and, therefore, is improper.

In addition, the Office Action itself notes that a reconstruction is proper "so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's

disclosure." Office Action of April 27, 2009 at page 12. In the present instance, however, the rejection over Bowen relies on assumptions and facts that have not been proven to be "knowledge which was within the level of ordinary skill at the time the claimed invention was made." Rather, the assumptions and facts relied upon in the Office Action have been constructed in the Office Action with no support being provided in the prior art.

Therefore, Applicant submits that the Office Action fails to set forth a prima facie case of obviousness. Specifically, Applicant submits that Bowen fails to describe or suggest enabling a first user to identify profile information with respect to a plurality of video games, the profile information including data that enables user determination of the skill of the first user for a first identified video game relative to a second identified video game, as recited in independent claim 12. For at least these reasons, Applicant respectfully requests reconsideration and withdrawal of the rejection of independent claim 12 and its dependent claims.

Independent claim 27 recites enabling a first user to access an interface that includes profile information of a second user with respect to a plurality of video games, the profile information included in the interface enabling user determination of a skill level of the second user for a first identified video game relative to a second identified video game. Accordingly, for reasons similar to those described above with respect to independent claim 12, Applicant respectfully requests reconsideration and withdrawal of the rejection of independent claim 27 and its dependent claims.

Claims 13-14, 22-23, 28, and 36-37, which depend from claims 12 and 27, and independent claims 42 and 49, along with their dependent claims 43-48 and 50-54, have been rejected as being unpatentable over Bowen in view of Brittin ("The Effect of Categorization on Preferences for popular Music Styles"). With respect to claims 13-14, 22-23, 28, 36-37, Applicant submits that Brittin, which was cited for describing a Likert scale, fails to remedy the deficiencies of Bowen discussed above. Accordingly, for at least the reasons discussed above with respect to independent claims 12 and 27, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 13-14, 22-23, 28, and 36-37.

Independent claims 43 and 50 recite, among other things, displaying several gradations of skill with respect to each of the one or more video games, the gradations of skill including a level representing relatively little skill, a level representing relatively intermediate skill, and a level

representing relatively great skill, and enabling the first user to identify third profile information with respect to each of the one or more video games, the third profile information including, for each of the one or more video games, a level of skill that is selected from among the several displayed gradations of skill. For reasons similar to those discussed above with respect to claim 12, Applicant submits that Bowen, Brittin, and the proposed combination each fail to describe or suggest at least these features of claims 43 and 50. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 43 and 50 and their dependent claims.

Claims 19 and 33, which depend from claims 12 and 27, have been rejected as being unpatentable over Bowen in view of U.S. Patent No. 4,987,492 (Stults). Stults, which was cited for describing visages being used to represent users of a computer, fails to remedy the deficiencies of Bowen discussed above. Accordingly, for at least the reasons discussed above with respect to independent claims 12 and 27, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 19 and 33.

Conclusion

It is believed that all of the pending issues have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this reply should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this reply, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Pursuant to 37 CFR §1.136, applicant hereby petitions that the period for response be extended for one month to and including August 27, 2009.

The fee in the amount of $130.00 in payment of the one-month extension of time fee is being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization.

Applicant submits that all claims are in condition for allowance. Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: August 26, 2009

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